IN THE

Supreme Court of the United States

October Term, 1948.

No. 356.

THE CENTURY INDEMNITY COMPANY,
Petitioner,

AGAINST

RICHARD L. ROSENBAUM, Trustee in Bankruptcy for ULTIMITE CORPORATION, Bankrupt, and GRAYS FERRY BRICK COMPANY,
Respondents.

Brief on Behalf of Respondent Rosenbaum, Trustee in Bankruptcy, in Opposition to Petition for Writ of Certiorari.

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INDEX.

	PAGE
Question Presented	1
Summary of Argument	1
The Facts	2
POINT I.—There is no question of Federal Law involved	5
POINT II.—The decision of the Court below is not in conflict with the decisions of the Supreme Court, or of other Circuit Courts, or of the New York Courts	8
POINT III.—No special or important reasons exist for certiorari	17
CONCLUSION	17

CASES CITED.

American Surety Co. v. Citizens Bank (C. C. A. 8), 294 Fed. 609, 616	8
American Surety Company of New York v. Sampsell, 327 U. S. 269, 66 S. Ct. 571, 90 L. Ed. 663	7
Belknap Hardware & Mfg. Co. v. Ohio River Contracting Co. (C. C. A. 6), 271 Fed. 144	11
Bell v. Greenwood, 229 App. Div. 550	8
Campbell v. Haverhill, 155 U. S. 610, 15 S. Ct. 217, 39 L. Ed. 280	6
Century Cement Mfg. Co. v. Fiore, 264 App. Div. 475	13
Chattanooga Foundry & Pipe Works v. Atlanta, 203 U. S. 390, 27 S. Ct. 65	6

PAGE

Commercial Credit Co. Inc. v. Davidson (C. C. A. 5), 112 F. (2) 54 6
Cox v. New England Equitable Ins. Co. (C. C. A. 8), 247 Fed. 955 12

Equitable Surety Co. v. United States, 243 U. S. 488, 34 S. Ct. 803, 58 L. Ed. 1394 5
Erie Railroad Co. v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 ..... 6, 7

Farmers Bank v. Hayes (C. C. A. 6) 58 F. (2) 34, 37 9
Farmers State Bank v. Jones (C. C. A. 6), 135 F. (2) 215 13
Federal Land Bank v. Smith, 129 Me. 233, 151 A. 420 8
Fidelity & Deposit Co. v. Union State Bank (D. C. Minn.), 21 F. (2) 102 16

German Savings & Loan Society v. Tull (C. C. A. 9), 136 F. 1, 6 8
Gray v. Jacobsen, 56 App. D. C. 353, 13 F. (2) 959 8

Hennigson v. United States Fidelity & Guaranty Co., 208 U. S. 204, 28 S. Ct. 389, 52 L. Ed. 987 11

In re Flotation Systems, Inc. (D. C. Cal.), 65 F. Supp. 688, 701 5
In re Interborough Consol. Corporation (C. C. A. 2), 288 Fed. 334, cert. den. 262 U. S. 752, 43 S. Ct. 700, 67 L. Ed. 1215 14

Kane v. First National Bank (C. C. A. 5), 56 F. (2) 534, 535, 536 15

Lacy v. Maryland (C. C. A. 4) 32 F. (2) 48 9
Land v. Cutler, 155 Mass. 451, 29 N. E. 1085 8
Laski v. State, 217 App. Div. 426 8
London & Lancashire Indemnity Co. v. Endies, (C. C. A. 8), 290 Fed. 98 9

PAGE

Mack v. Calleran, 136 N. Y. 617 16
Martin v. National Surety Co., 300 U. S. 588, 57 S. Ct. 531, 81 L. Ed. 822 15
Maryland Casualty Co. v. Lincoln Bank & Trust Co. (D. C. Ky.), 40 F. Supp. 782 16
Matter of Allied Products Co. (C. C. A. 6), 134 F. (2) 725 ..... 6, 9
Matter of Duncan (C. C. A. 3), 127 F. (2) 640 12
Matter of Hutcherson, (C. C. A. 7), 133 F. (2) 959 14
Matter of Zaepfel & Russell, Inc. (D. C. Ky.), 49 Fed. Supp. 709 13
McKenzie v. Irving Trust Co., 323 U. S. 365, 65 S. Ct. 405, 409, 89 L. Ed. 309 15
Momand v. Twentieth Century Fox Film Corp. (D. C. Okl.) 37 F. Supp. 649 6
Moran v. Guardian Casualty Co. (C. C. A. Dist. Col.), 76 F. (2) 437 12
Municipal Housing Authority v. Hatfield Electric Corp., 264 App. Div. 99, 101 13
Myers v. Matley, 318 U. S. 622, 63 S. Ct. 780, 87 L. Ed. 1043 6

National Bank v. Downie, 218 U. S. 345, 31 S. Ct. 89, 54 L. Ed. 1065 6

People v. Peoples Bros. (D. C. Pa.), 254 Fed. 489, 492 8
Philadelphia National Bank v. McKinley, (C. C. A. Dist. Col.), 72 F. (2) 89, cert. den. 293 U. S. 583 9
Prairie State National Bank v. United States, 164 U. S. 277, 17 S. Ct. 142, 51 L. Ed. 412 ..... 5, 8, 9
Prudence Realization Corporation v. Geist, 316 U. S. 89, 62 S. Ct. 982, 86 L. Ed. 1293 7

PAGE

Sapero v. Neiswender (C. C. A. 4), 24 F. (2) 403 6
Sears v. Mahoney (C. C. La.), 66 Fed. 860 5
Sexauer & Lemke v. Burke Sons Co., 228 N. Y. 341 11
Scarsdale National Bank & Trust Co. v. U. S. Fidelity & Guaranty Co., 264 N. Y. 159 11
Third National Bank v. Detroit Fidelity & Surety Co. (C. C. A. 5), 65 F. (2) 548, cert. den. 290 U. S. 667 16
Tobin v. Insurance Agency Co. (C. C. A. 8), 80 F. (2) 241, 243 14
United States v. Ansonia Brass Co., 218 U. S. 452, 31 S. Ct. 49, 54 L. Ed. 1107 5
United States v. Munsey Trust Co., 332 U. S. 234, 67 S. Ct. 1599 11
United States v. Reese (C. C. A. 7) 131 F. (2) 466 6
United States Fidelity & Guaranty Co. v. Sweeney, (C. C. A. 8), 80 F. (2) 235, 238 12
U. S. Fidelity & Guaranty Company v. Triborough Bridge Authority, 297 N. Y. 31 13
Walker v. Brown, 165 U. S. 654, 17 S. Ct. 453, 41 L. Ed. 865 15
Zartman v. First National Bank, 189 N. Y. 267 ... 15

STATUTES AND AUTHORITIES CITED.

Miller Act, 40 U. S. C. A. Section 270 5
Bankruptcy Act, Section 70c, Section 110 United States Code, Title 11, Chapter 7 ..... 6, 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

THE CENTURY INDEMNITY COMPANY, *Petitioner,* AGAINST RICHARD L. ROSENBAUM, Trustee in Bankruptcy for ULTIMITE CORPORATION, Bankrupt, and GRAYS FERRY BRICK COMPANY, *Respondents.*	No. 356.

Brief on Behalf of Respondent Rosenbaum, Trustee in Bankruptcy, in Opposition to Petition for Writ of Certiorari.

Question Presented.

Is the equitable claim of the petitioner-surety company entitled to priority over a judgment-creditor and a Trustee in Bankruptcy armed with the rights of a judgment-creditor?

Summary of Argument.

There is no question of federal law involved and under applicable decisions the equitable claim of the surety petitioner is subordinate to the rights of the judgment-creditor and the Trustee in Bankruptcy. No special or important reasons exist for certiorari.

The Facts.

The facts were stipulated and are as follows:

On December 20, 1941, the bankrupt entered into a contract with the Government for certain construction work at Scituate, Mass. (fol. 112). On December 30, 1941, the Century Indemnity Company, hereinafter referred to as Surety, executed and delivered its Payment Bond guaranteeing payment to all persons supplying labor or material in the prosecution of the work provided for in that contract, as required by law (fol. 113). The bankrupt completed the contract but failed to pay in full for all labor and materials supplied to it in the prosecution of the work, with the result that the Surety, pursuant to its obligation on its payment bond, was obliged to and did pay to persons supplying labor and materials to the bankrupt under that contract, the total sum of $3,762.22 (fols. 115-117). All persons in the category aforementioned who made claim under its bonds were paid by the Surety and at the time of making such payments, it obtained assignments from those persons, of their rights against the bankrupt (fol. 117).

After making the contract with the Government, aforesaid, the bankrupt assigned to the Jamaica National Bank of New York, hereinafter referred to as the Bank, the monies due from the Government under said contract, and on July 6, 1942, the Bank received from the Government the sum of $4,152.50, which represented the balance due from the Government thereunder (fols. 118-119).

At the time of the receipt of this money by the Bank, the bankrupt was no longer indebted to it under the assignment, and the Bank had no interest in the fund, except for some $33.27 representing an overdraft or other charge due from the bankrupt (25).

Upon receiving said sum of $4,152.50 from the Government, the Bank deducted the overdraft or other charge

against the bankrupt in the sum of $33.27, and deposited the balance of $4,119.23 to the account of the bankrupt (fol. 121).

On July 11, 1942, Grays Ferry Brick Company, hereinafter referred to as Grays, recovered judgment against the bankrupt in the United States District Court for the Eastern District of New York, in the sum of $5,497.33; filed a transcript of the judgment with the Clerk of the New York County on July 13, 1942, and on July 14, 1942 served a Third Party Order on the Bank (fol. 122), under Section 799(a) of the New York Civil Practice Act.

Grays' judgment was not for labor or material supplied to the bankrupt in the prosecution of the work called for by its contract with the Government, but for concrete blocks sold to the bankrupt (fol. 123).

On July 14, 1942 the bankrupt made an assignment for the benefit of creditors which was recorded in the County of New York on July 17, 1942 (fol. 109).

An involuntary petition in bankruptcy was filed against the bankrupt on July 21, 1942, on which date the bankrupt was insolvent within the meaning of the Bankruptcy Act (fol. 110).

The bankrupt was duly adjudicated on August 6, 1942. A Receiver was appointed on July 21, 1942, and qualified on July 22, 1942. After adjudication, and on October 15, 1942, the Receiver was elected Trustee. Thereafter the Trustee resigned and the present Trustee was appointed Substituted Trustee, and duly qualified (fol. 111).

After the service by Grays on the Bank of the Third Party Order aforesaid, and the filing of the involuntary petition against the bankrupt, the Receiver instituted a proceeding in the District Court to compel the Bank to pay over to him the net sum in question (fol. 32). On August 5, 1942, an order was made directing the Bank to pay over the said sum subject to any lien which Grays might have (fol. 126). The Surety was not a party to the

proceedings which resulted in the order, and had no knowledge thereof until after the making of the order (fols. 126-127).

On August 6, 1942, the Bank paid to the Receiver the said sum, which was thereafter deposited into the Receivership Account, and now forms part of the balance in the estate account (fols. 128-129).

In addition to those persons who supplied labor or materials to the bankrupt in the prosecution of the Government contract in question, and to whom the Surety made payment under its Payment Bond, five other creditors filed proofs of claim with the Referee for labor or materials supplied to the bankrupt under the same contract. The claims of these five creditors aggregate the total sum of $258.14 (fol. 129).

On July 21, 1942 (the date of the filing of the involuntary petition) the liabilities of the bankrupt, in accordance with the proofs of claim filed with the Referee, exceeded its assets by approximately $100,000, and the bankrupt was insolvent within the meaning of the Bankruptcy Act, of which condition the Surety and Grays had reasonable cause to believe (fol. 134). The Trustee has insufficient money or property to pay in full all liabilities due all classes of creditors of the bankrupt (fol. 135).

The answer interposed on behalf of the Trustee, other than denials of fact since obviated by the stipulation of facts affirmatively alleged that the rights of the Century Indemnity Company were subordinated to those of the Trustee in Bankruptcy (fol. 99); and deeming the transfer as having been made immediately before bankruptcy, said transfer was voidable as a preference under Section 60 of the Bankruptcy Act (fol. 100).

POINT I.

There Is No Question of Federal Law Involved.

The petitioner contends its rights are governed by the Miller Act, 40 U. S. C. A. Section 270, and that by reason thereof federal law and not state law must apply.

Laborers and materialmen do not have enforceable rights against the United States for their compensation and cannot acquire a lien on public buildings. As a substitute for that protection, the various statutes of which the Miller Act was the last, were enacted so as to require a surey to guarantee their payment.

> *Equitable Surety Co.* v. *United States,* 243 U. S. 488, 34 S. Ct. 803, 58 L. Ed. 1394;
> *United States* v. *Ansonia Brass Co.,* 218 U. S. 452, 31 S. Ct. 49, 54 L. Ed. 1107.

It has been specifically held that the Miller Act, and its predecessor statutes, does not create a lien in favor of unpaid laborers and materialmen.

> *In Re Flotation Systems Inc.* (D. C. Cal.), 65 F. Supp. 688, 701;
> *Sears* v. *Mahoney* (C. C. La.), 66 Fed. 860.

The United States is not a party in interest and the action is not on the bond executed by the petitioner. The basis of the rules as to the existence of equitable rights is found in equitable principles and not in any federal statute. (*Prairie State National Bank* v. *United States,* 164 U. S. 277, 17 S. Ct. 142, 51 L. Ed. 412.) The Miller Act does not create, limit, or expand the equitable rights of anyone.

The matter presented does not involve the interpretation and application of a Federal Statute such as present

in *National Bank* v. *Downie,* 218 U. S. 345, 31 S. Ct. 89, 54 L. Ed. 1065; and in *United States* v. *Reese* (C. C. A. 7) 131 F. (2) 466. Even as to rights created by federal statute, it has been held that a State is free to place limitations upon the time in which the remedy granted can be asserted in the State, and upon the assignability of the cause of action, without impairing the rights created by Congressional statutes.

Campbell v. *Haverhill,* 155 U. S. 610, 15 S. Ct. 217, 39 L. Ed. 280;
Chattanooga Foundery & Pipe Works v. *Atlanta,* 203 U. S. 390, 27 S. Ct. 65;
Momand v. *Twentieth Century Fox Film Corp.* (D. C. Okl.) 37 F. Supp. 649.

The petitioner, armed with an equitable lien, invoked the jurisdiction of the Bankruptcy Court to enforce its rights as against the Trustee. The Trustee is vested not only with the title of the bankrupt but clothed with the righ of an execution creditor with a levy on the property which passes into the Trustee's custody. *Myers* v. *Matley* 318 U. S. 622, 63 S. Ct. 780, 87 L. Ed. 1043; Bankruptcy Act Section 70c, Section 110 United States Code, Title 11, Chapter 7.

The extent of the Trustee's rights, remedies and powers as a lien creditor are measured by the substantive law of the jurisdiction governing the property in question.

Sapero v. *Neiswender* (C. C. A. 4), 24 F. (2) 403;
Commercial Credit Co. Inc. v. *Davidson* (C. C. A. 5), 112 F. (2) 54;
Matter of Allied Products Co. (C. C. A. 6), 134 F. (2) 725.

Any doubts on the subject were dispelled by the principles expressed by this Court in *Erie Railroad Co.* v.

Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, and the rulings in *Prudence Realization Corporation* v. *Geist,* 316 U. S. 89, 62 S. Ct. 982, 86 L. Ed. 1293, and *American Surety Company of New York* v. *Sampsell,* 327 U. S. 269, 66 S. Ct. 571, 90 L. Ed. 663, that the application of federal law governing the distribution of a bankrupt's estate is made with appropriate regard for rights acquired under rules of state law.

The petitioner does not contend that the Court below incorrectly stated the New York law that an equitable lien is deferred to legal liens obtained upon property by judgment-creditors and Trustees in Bankruptcy.

In none of the cases relied upon by the petitioner was there a third party order the effect of which is fixed in Section 799a of the New York Civil Practice Act as follows:

> "Every transfer by the judgment-debtor by assignment or otherwise, of any property held by, or debt due from a third party upon whom there shall have previously been served an order or subpoena containing any stay or injunction as provided in this article, shall be subject to such rights and remedies as the judgment-creditor would have had if such transfer had not been made; except that the foregoing provisions of this section shall not apply to (a) a transfer of a debt evidenced by a negotiable instrument which has been transferred to a transferee in good faith and for value, or (b) transfer of property which has been delivered, or for which a negotiable warehouse receipt, negotiable bill of landing or other negotiable document of title has been delivered, to a transferee in good faith and for value. (Added L. 1938, ch. 605, in effect Sept. 1.)"

It has also been repeatedly held that equitable liens and subrogation will not be enforced at the expense of a legal right.

German Savings & Loan Society v. *Tull* (C. C. A. 9), 136 F. 1, 6;
Gray v. *Jacobsen,* 56 App. D. C. 353, 13 F. (2) 959;
American Surety Co. v. *Citizens Bank* (C. C. A. 8), 294 Fed. 609, 616;
People v. *Peoples Bros.* (D. C. Pa.), 254 Fed. 489, 492;
Bell v. *Greenwood,* 229 App. Div. 550;
Laski v. *State,* 217 App. Div. 426;
Federal Land Bank v. *Smith,* 129 Me. 233, 151 A. 420;
Land v. *Cutler,* 155 Mass. 451, 29 N. E. 1085.

POINT II.

The decision of the Court below is not in conflict with the decisions of the Supreme Court, or of other Circuit Courts, or of the New York Courts.

All of the cases cited by the petitioner in Point I and Point II of its brief fall into two categories.

The first is where the contractor defaulted and the contract was completed by the surety. Here it was uniformly held that the surety was subrogated to the rights of the government, and was vested with a right of ownership to all unpaid monies until complete reimbursement.

This line of cases is based upon *Prairie State National Bank* v. *United States,* 164 U. S. 277, 17 S. Ct. 142, 51 L. Ed. 412, which established the law that where a surety completes a defaulted contract of its principal, it becomes entitled to the monies in the hands of the government ap-

plicable to the completion of that contract ahead of any general creditor.

In *Farmers Bank* v. *Hayes* (C. C. A. 6), 58 F. (2) 34, 37, the litigation was between the surety and a bank. The contractor, at the time of the procurement of the bond, assigned to the surety all deferred payments, retained percentages, and monies due at the time of any breach by the contractor. Thereafter the contractor assigned all earnings under the contract to the bank as collateral for a loan. After default by the contractor, the surety completed the contract. The surety prevailed.

In *London & Lancashire Indemnity Co.* v. *Endies* (C. C. A. 8), 290 Fed. 98, the surety performed the contract and sued to enjoin the payment of the reserve to the contractor, who, pending the suit, went into bankruptcy. The surety prevailed on the authority of the *Prairie Bank* case (*supra*).

In *Lacy* v. *Maryland* (C. C. A. 4), 32 F. (2) 48, the litigation involved the surety and a bank. The contractor, who had assigned monies due under the contract first to the surety and then to a bank, defaulted in the performance of the contract which was completed by the surety. The surety prevailed. The basis of the decision therein is summarized by the Court in *Matter of Allied Products Co.* (C. C. A. 6), 134 F. (2) 725, as not resting on the equitable principle of subrogation, but on the ground that the assignment to the surety had priority over the subsequent assignments.

In *Philadelphia National Bank* v. *McKinley* (C. C. A. Dist. Col.), 72 F. (2) 89, cert. den. 293 U. S. 583, unpaid laborers filed a bill in the District Supreme Court for an order directing the Secretary of Treasury to pay a balance due under a government construction contract to a receiver to be appointed by the Court and for disposition of the fund to laborers and materialmen. The bankrupt contractor had defaulted and "the surety then under-

took the performance of the balance of the contract" (p. 90), under a direct contract with the United States whereby it was to be paid. The Trustee moved to dismiss the bill on the ground that the contractor being adjudged bankrupt the District Supreme Court had no jurisdiction to administer the fund for the benefit of creditors.

The Court held surety subrogated to rights of the United States and stated (p. 91):

> "* * * the bankrupt having abandoned the work and defaulted in the performance of the contract, and its surety having taken over the work, the latter, rather than the former, would be clearly entitled to the fund to the extent necessary to reimburse it for moneys expended in carrying it out, and the surety would in such case be bound to those doing work and furnishing materials. * * * At the time of bankruptcy, the only right which the bankrupt could assert to any of the fund in question was contingent upon their being a surplus after the reimbursement of its surety for the work done by it, and the obligation of the surety was not only to do the work, but to pay for the labor and materials, and admittedly the fund is insufficient for this."

Further, the Court, after noting the funds in the hands of the United States was insufficient to pay all claims, and holding that the Trustee could have no claim to it, added (p. 92):

> "It is not property which prior to the filing of the petition, the bankrupt could have transferred, or which could have been levied upon and sold under judicial process against it."

In *Scarsdale National Bank & Trust Co.* v. *U. S. Fidelity & Guaranty Co.*, 264 N. Y. 159, the litigation was between the surety and a bank which had taken an assignment of monies due the contractor from the state. The surety completed the contract after the contractor's default. The Court held the surety subrogated to the state's right "to retain earned moneys and apply them on the cost of any completed work".

In the instant case, the bankrupt completed the contract and thus the rule of subrogation to the rights of the government is inapplicable. There can be no subrogation when there is nothing to which rights may attach. *United States* v. *Munsey Trust Co.*, 332 U. S. 234, 67 S. Ct. 1599; *Sexauer & Lemke* v. *Burke Sons Co.*, 228 N. Y. 341, and it is respectfully submitted that the above cases relied upon by petitioner are inapplicable herein.

The second class of cases cited by the petitioner is based upon facts indicating that the contract was completed and it was held that unpaid laborers and materialmen had an equitable lien on the funds reserved or the percentages retained under the contract or upon unpaid sums still in the possession of the government, superior to the claims of general creditors or assignees, to which lien the surety was subrogated upon payment.

This class is illustrated by *Hennigson* v. *United States Fidelity & Guaranty Co.*, 208 U. S. 204, 28 S. Ct. 389, 52 L. Ed. 987, where the litigation was between the surety and general creditor and the monies involved constituted the funds retained by the government.

In *Belknap Hardware & Mfg. Co.* v. *Ohio River Contracting Co.* (C. C. A. 6), 271 Fed. 144, the litigation was between labor and material suppliers and money loan creditors over the "retained percentage" under a contract which an equity receiver completed after the contractor's default.

In *United States Fidelity & Guaranty Co.* v. *Sweeney* (C. C. A. 8), 80 F. (2) 235, 238, it was held that the surety's rights attached "to such part of the contract price as may remain in the possession of the government after the completion of the work by the contractors" and to funds paid over and deposited in a special account used only for the specific purpose of payment for labor and material. Here more than four months prior to bankruptcy the bankrupt contractor assigned to the surety all deferred payments, retained percentage, monies to become due under the contract and agreed with the surety that the latter be subrogated to the rights of the principal in the contract. The Court held that there was no preference voidable under Section 60 of the Bankruptcy Act, since amended.

Cox v. *New England Equitable Ins. Co.* (C. C. A. 8), 247 Fed. 955, involved the claims of a bank and other general creditors as against a surety who had paid materialmen and laborers and received an assignment of these claims as against a reserve which had been paid over to a contractor by mistake. The rights of judgment-creditors or of the trustee were not before the court.

Matter of Duncan (C. C. A. 3), 127 F. (2) 640, involved unpaid balances still in the hands of the Pennsylvania public authorities at the time of bankruptcy. The Court held that Pennsylvania law governed the case and it concluded that the surety thereunder was entitled to subrogation to the unpaid balance upon the contract, and the Trustee's standing as a judgment-creditor was "no higher than that of the bankrupt".

In *Moran* v. *Guardian Casualty Co.* (C. C. A. Dist. Col.), 76 F. (2) 437, the litigation was between the surety and the bank to a fund due by the United States to the contractor under a government contract. The funds were paid over by the government to a receiver appointed in the cause. The surety prevailed.

In *Matter of Zaepfel & Russell Inc.* (D. C. Ky.), 49 Fed. Supp. 709, aff'd sub. nom. *Farmers State Bank* v. *Jones* (C. C. A. 6), 135 F. (2) 215, the proceedings involved the respective rights of the surety and a bank as to the reserved portion of the contract. The question was as to which party was entitled to a priority over the other. The rights of the Trustee in Bankruptcy were not affected and the notation of appearances indicate that the Trustee did not appear.

In *U. S. Fidelity & Guaranty Company* v. *Triborough Bridge Authority,* 297 N. Y. 31, the issues were between the surety and the United States which had filed a tax lien for taxes owned by the contractor. The building contract provided that if the contractor failed to pay all laborers and materalmen, the authority had the right to withhold payments in an amount sufficient to pay same. The Court held the surety to be subrogated to the rights of the authority.

Century Cement Mfg. Co. Inc. v. *Fiore,* 264 App. Div. 475, involved the claims of a surety and an assignee of the contractor. The Court held that the surety was entitled to enforce its subrogation rights against the funds in the possession of the state exactly as the state would have been entitled to use this money as an offset if it had paid the laborers and materialmen directly.

Municipal Housing Authority v. *Hatfield Electric Corp.,* 264 App. Div. 99, 101, involved the claims of the surety and bank-assignee. The Court, after holding that the surety was subrogated to rights of the public authority, held that "the surety acquired the right of the authority to resort to the moneys retained in the hands of the authority to reimburse it for its outlay".

In all of these cases relied upon by petitioner the contest was over the funds reserved, percentages retained, or unpaid sums still in the possession of the government. This is not true in the instant matter. The fund here involved

was paid over to the bankrupt and deposited in its general bank account where it remained until subjected to the third party order. Petitioner cites no case which extends the rights of a surety to the situation present here. Nor is there merit to its additional argument that a judgment-creditor could not acquire a lien on the fund based on the contention that the bankrupt had no right to the fund and that the same did not belong to him except to the extent of any surplus that might remain after reimbursement of his surety. The petitioner is confusing the bases for the rulings of the Court in the aforementioned classes of cases, and is attempting to apply the rule applicable to surety completed contracts to contractor completed contracts. There are no cases cited holding that unpaid laborers and materialmen have legal ownership rights to the funds or hold rights as equitable assignees. All that is acquired is an equitable lien, but as stated in *Tobin* v. *Insurance Agency Co.* (C. C. A. 8), 80 F. (2) 241, 243:

> "An equitable lien does not constitute an estate or property in the subject of it, but is simply an encumbrance or charge upon such property, the legal title remaining in the creator of the lien."
>
> *In re Interborough Consol. Corporation* (C. C. A. 2), 288 Fed. 334, cert. den. 262 U. S. 752, 43 S. Ct. 700, 67 L. Ed. 1215.

In *Matter of Hutcherson* (C. C. A. 7), 133 F. (2) 959, the Court held that although a claimant held an equitable title to funds under an unrecorded assignment of a judgment under an Indiana statute, legal title thereto passed to the trustee, who could successfully invoke Section 60 of the Bankruptcy Act to defeat claimant's rights to the funds.

An equitable lien is good only as against the immediate party and third persons who are either volunteers

or take with notice. *Walker* v. *Brown*, 165 U. S. 654, 17 S. Ct. 453, 41 L. Ed. 865; *Zartman* v. *First National Bank*, 189 N. Y. 267. This rule was applied in *Martin* v. *National Surety Co.*, 300 U. S. 588, 57 S. Ct. 531, 81 L. Ed. 822. In that case a creditor agent of the government contractor collected monies due under the contract under a power of attorney from the contractor with knowledge of an agreement between the contractor and the surety whereby the proceeds of the contract became a fund to be devoted to the payment of the materialmen. The Supreme Court held that the equities in favor of the materialmen were impressed upon the fund so received and their interest was superior to that of the recipient. The *Martin* case is noted in *McKenzie* v. *Irving Trust Co.*, 323 U. S. 365, 65 S. Ct. 405, 409, 89 L. Ed. 309, with the comment that in the *Martin* case the subsequent assignee took with notice of an earlier assignment and as part of an obviously fraudulent scheme.

In the instant matter the equitable lien had not been perfected by the taking or acquiring possession of the fund prior to the service of the third party order or institution of the bankruptcy proceedings.

Several Courts have expressed applicable views as to the effect of the equitable lien on funds actually paid over to the contractor as present herein.

In *Kane* v. *First National Bank* (C. C. A. 5), 56 F. (2) 534, 535, 536, the Court stated:

> "We are not advised of any statute which requires that payments duly made to a contractor for public work be handled by him in any special way, or be given any particular application. No such contractual obligation appears in this case. In absence of statute or stipulation otherwise the general responsibility of the contractor is credited in contracting with him, and his general resources are

drawn on by him in executing the contract. Money or checks paid to him as the work progresses are the property of the contractor unincumbered by any trust, just as are payments to others for goods manufactured or services performed. The contractor's banker may receive such checks and is not bound to see to their application, nor to ascertain the state of the contractor's account with each contract; nor, if he knows it, need he govern himself in anywise with reference thereto. No wrong is done to the contractor's surety in recognizing the contractor's full title to such checks by taking them on deposit with the consequences ordinarily attaching to such deposit."

Third National Bank v. *Detroit Fidelity & Surety Co.* (C. C. A. 5), 65 F. (2) 548, cert. den. 290 U. S. 667;
Maryland Casualty Co. v. *Lincoln Bank & Trust Co.* (D. C. Ky.), 40 F. Supp. 782;
Fidelity & Deposit Co. v. *Union State Bank* (D. C. Minn.), 21 F. (2) 102.

In *Mack* v. *Colleran,* 136 N. Y. 617, the Court stated:

"It would lead to great embarassment, uncertainty and inconvenience if a person receiving money from a builder would have to ascertain whether he obtained it under a building contract before he could safely take it for property sold or apply it upon an antecedent debt justly due."

Under the cases above quoted, between July 6, 1942, the date when the fund was deposited in the bankrupt's account and July 14, 1942, the date of service of Grays' third party order the fund was the property of the bankrupt and could have been lawfully paid out to any *bona*

fide recipient or creditor without notice. It was subject, therefore, to the lien of the judgment-creditor and that of the trustee.

The fund could "have been levied upon and sold under judicial process against him (the bankrupt), or otherwise seized, impounded, or sequestered" under Section 70 (a) of the Bankruptcy Act (5) and thus passes to the Trustee under Section 70c of the Bankruptcy Act. (United States Code, Sec. 110, Title 11.)

POINT III.

No Special or Important Reasons Exist for Certiorari.

The decision of the Circuit Court of Appeals is not in conflict with the decisions of this Court, or of other Circuit Courts, or of New York Courts. The decisions relied upon by the petitioner did not pass upon the question presented in the case at bar (Point II, *supra*).

The decision of the Circuit Court below is of limited application, due to the facts presented, and is not of general importance. This is borne out by the fact that the question presented has been rarely raised although the Miller Act and its predecessor Acts have been in existence over a great number of years.

CONCLUSION.

It is respectfully submitted that the petitioner has shown no reason for granting its petition for certiorari, and the petition should be denied.

Respectfully submitted,

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